

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA)
Plaintiff,)
v.) Case No. 1:21-cr-00084-SRC-1
DUSTIN A. HAMLETT,)
Defendant.)

STATUS REPORT

Defendant Dustin A. Hamlett, through his attorney, Nicole Johnston, and in response to the Court's Order Appointing CJA Counsel-(CJA 20) [54] states as follows:

1. Counsel has reviewed eligibility for retroactive application of Amendment 821 as it pertains to Defendant, Dustin A. Hamlett. Counsel has determined that it is not in the Defendant's best interest to file a Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582 and Retroactive Amendment 821, USSG.

2. On October 18, 2021, Defendant was convicted of Possession with Intent to Distribute Methamphetamine, in violation of 21 U.S.C § 841(a)(1) and 21 U.S.C § 841(b)(1)(B). *See* Presentence Investigation Report at 3. This Court imposed a 40-month sentence on January 18, 2022. At the sentencing hearing, this Court found that Mr. Hamlett's base offense level was 24 and the total offense level was 21. The Court determined that Defendant had 8 criminal history points, including 2 "status points" for having committed the instant offense while under a criminal justice sentence. Combined

with the Criminal History Category of IV, this produced a Guidelines imprisonment range of 60 to 71 months. The Court granted a departure of 33.3 percent from the low end of Mr. Hamlett's Guideline range [REDACTED] which resulted in a final sentence of 40 months. Mr. Hamlett is currently serving that sentence and the Bureau of Prisons projects his release date as February 2, 2024.

3. Mr. Hamlett is eligible for a reduction of his sentence by retroactive application of Amendment 821 to USSG § 4A1.1 pursuant to 18 U.S.C. § 3582(c) and policy statement § 1B1.10.¹ Specifically, the amendment eliminated the 2 criminal history "status points" and replaced it with 1 status point for people with 7 or more criminal history points. As amended, Mr. Hamlett's criminal history is reduced by 2 points for a total of 6 points, and his Criminal History Category is III. This results in a lower Guideline range of 46 to 57 months, based on a total offense level of 21.

4. At the original sentencing, the Court imposed nearly a 33.3% departure below the Guidelines range. [REDACTED]

[REDACTED]

[REDACTED] On December 1, 2023 the Probation office notified the Court that, as amended, Defendant's new sentencing range is 46 to 57 months. Defendant agrees with this analysis. A commensurate reduction with regard to the low end of the new guideline imprisonment range would result in a sentence of 31 months imprisonment.

¹ Chapter Four of the Guidelines was amended effective November 1, 2023. See USSG Amendment 821. The Sentencing Commission has determined that both parts of the criminal history amendment is retroactive – regarding "Status Points" (Part A) and "Zero Point Offenders" (Part B) – for purposes of the policy statement USSG § 1B1.10.

5. As noted in the December 1, 2023 Probation Report, Mr. Hamlett's recalculated guidelines make him eligible for immediate release. However, the new estimated earliest release date is February 1, 2024 given that Amendment 821 provides in the new § 1B1.10(e)(2) that no order by the courts reducing defendant's sentence may take effect before February 1, 2024.

6. Additionally, an October 4, 2023 Operations Committee Memorandum to EDMO Judges states that, "To the extent any sentence reduction would result in a defendant being eligible for immediate release, the judgment should delay the effective date for 14 days, to permit organized release procedures and creation of a home plan, recognizing that no release may go into effect prior to February 1, 2024."

7. Mr. Hamlett's current projected release date is February 2, 2024. With an additional 13 days added to his judgment, Mr. Hamlett's projected release date under a Motion for Sentence Reduction pursuant to 18 U.S.C. § 3582 and retroactive Amendment 821, USSG, would likely be approximately two weeks later than Mr. Hamlett's current projected release date of February 2, 2024. Counsel has determined filing a motion for relief is not in the Defendant's best interest and would likely result in a delay in the Defendant's release rather than procuring him an early release.

Respectfully submitted,

/s/ Nicole Johnston
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Office of the United States Attorney.